

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0077, In the Matter of Steve A. Kalaitzidis and Malamati Kalaitzidis, the court on June 21, 2005, issued the following order:

The petitioner, Steve A. Kalaitzidis, appeals a post-divorce order finding him in contempt. At the time of the May 13, 2003 hearing, the petitioner had filed for bankruptcy, but had not yet received a discharge of his debts. On June 19, 2003, the petitioner received his discharge from the bankruptcy court. See 11 U.S.C.A. § 727 (2004). The trial court issued its order on August 6, 2003, finding the petitioner in contempt for failure to pay alimony and for failure to pay educational loans and expenses of his adult children. The court ruled that to purge himself of contempt, the petitioner must pay in full all obligations respecting the educational loans and expenses for his children, and bring himself current with respect to the outstanding alimony arrearage.

The petitioner moved for reconsideration, alleging, among other things, that he had received his bankruptcy discharge. The trial court noted that its August 6 order related to the hearing held in May, at which time the bankruptcy was not final. It stated that it was now aware of the discharge, and ruled that "to the extent that the personal obligations of the petitioner have been discharged in bankruptcy, this fact is now acknowledged by the Court. However, there is no basis for reconsideration since the discharge in bankruptcy . . . did not occur until June 19, 2003." The court concluded:

To sum up, reconsideration is denied except as to the reimbursement checks and the items of personal property awarded to the petitioner. The discharge in bankruptcy as to the petitioner speaks for itself. To the extent that the discharge in bankruptcy legally discharges the petitioner from certain obligations set forth in the Decree of Divorce, and further described in the motion for reconsideration, this is now acknowledged by this Court. However, this does not alleviate the petitioner's obligation to pay alimony. I find no basis to grant reconsideration with respect to the petitioner's obligation to pay temporary and permanent alimony.

The sole issue before us is whether the trial court erred in finding the petitioner in contempt for failure to pay educational loans and expenses for his adult children despite the petitioner's bankruptcy discharge.

The petitioner argues that the trial court refused to consider the fact that he received his bankruptcy discharge when it ruled upon his motion for reconsideration. He contends that the trial court recognized that his obligations for educational loans and expenses were discharged, but that the court still refused to relieve him of its order that he pay those loans and expenses to purge himself of contempt. The respondent, Malamati Kalaitzidis, contends that the trial court recognized that while any obligations for educational loans and expenses owed by the petitioner to institutions may have been discharged, the petitioner's obligations to make payment for such loans and expenses for the benefit of the petitioner and her children were not discharged, as those payments are in the nature of support. See 11 U.S.C.A. § 523(a)(5) (2004).

We conclude that the trial court did consider the fact that the debtor received a discharge. The court specifically acknowledged that the discharge legally discharged the petitioner from certain obligations, and concluded that the discharge "speaks for itself." What is not clear from the trial court's order, however, is whether the trial court determined that the petitioner's obligations to pay educational loans and expenses were among the obligations that had been legally discharged.

On the one hand, the court never specifically vacated its ruling that the petitioner would be required to pay the educational loans and expenses in order to purge himself of contempt. On the other hand, after noting that certain obligations were discharged, the court stated that that fact did not alleviate the petitioner's obligation to pay alimony – the court made no mention of any obligation to pay educational loans and expenses.

Whether the petitioner's obligations to pay educational loans and expenses were discharged is a question of federal bankruptcy law. See Johnson v. Coe, 142 N.H. 182, 185-86 (1997). The court may look beyond the four corners of the divorce decree or settlement agreement to determine whether the obligations are in the nature of support. Cf. *id.* at 186. We cannot tell from the trial court's order whether it determined that these obligations were discharged, such that the petitioner need only bring himself current in his alimony obligation to purge himself of contempt, or whether it determined that they were not discharged. Because the discharge occurred after the May 13 hearing, it is unclear whether a further evidentiary hearing would be necessary to decide this question. Cf. 4 Collier on Bankruptcy ¶ 523.11[5] (15th ed. rev. 2005) (when a debt characterized as support is in dispute, court should hold evidentiary hearing to determine whether debt is actually in the nature of support within the meaning of 11 U.S.C.A. § 523(a)(5)). Furthermore, in their briefs on appeal, neither party has provided any developed argument on this issue beyond conclusory allegations that their obligations either were or were not discharged. Under these conditions, we decline to address in the first instance whether these obligations were discharged.

Accordingly, we vacate that portion of the trial court's order that requires the petitioner, in order to purge himself of contempt, "to pay in full or otherwise bring current all obligations respecting the educational expenses and loans for [his two children]." Upon remand, the trial court may address the issue of whether the petitioner's obligations for educational expenses and loans were discharged. The trial court shall support any decision it may make upon this issue with findings of fact and rulings of law. We remand for such further proceedings, consistent with this order, as the trial court deems appropriate.

Vacated in part and remanded.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

Eileen Fox
Clerk